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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,

10 Petitioner,

11 v.

12 Eugenii Glushchenko,

13 Respondent.  
14

No. CV-19-04678-PHX-SPL (JFM)

**ORDER**

15 On July 19, 2019, a hearing on preliminary injunction was consolidated with the  
16 merits in this action and held pursuant to Rule 65 of the Federal Rules of Civil Procedure.  
17 Based on the entire record, testimony, and arguments presented, the Court will enter a  
18 permanent injunction authorizing Petitioner to involuntarily administer nutrition and  
19 hydration to Respondent while he remains in custody pending his removal from the United  
20 States.

21 **I. Background**

22 Respondent Eugenii Glushchenko is a native and citizen of Russia, who is currently  
23 detained in the Eloy Detention Center in Eloy, Arizona pursuant to a final order of removal.  
24 Respondent commenced a hunger strike on June 19, 2019, and since that date, has refused  
25 63 meals, has lost 25% of his body weight, has become nonambulatory, and, based on the  
26 amount of time since his hunger strike began, could imminently develop permanent  
27 damage to his internal organs with the potential of death.  
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1 On July 10, 2019, the United States of America filed a Petition for Emergency Order  
2 (Doc. 1) and Motion for Temporary Restraining Order (Doc. 2) to involuntarily administer  
3 nutrition to Respondent. In light of the seriousness of the allegations and the risk of harm  
4 that could result by permitting Respondent to respond to the request for a Temporary  
5 Restraining Order, the Court entered a Temporary Restraining Order the same day  
6 authorizing the United States to involuntarily administer nutrition and hydration to  
7 Respondent and perform involuntary medical examinations if necessary to preserve his  
8 life. (Doc. 5.) The United States filed a status report on July 15, 2019, indicating that at  
9 times between July 10 and July 15 Respondent continued to refuse nutrition, necessitating  
10 involuntary administration of nutrients on two occasions. The United States requested that  
11 the Court continue its injunction authorizing the continued involuntary administration of  
12 nutrition and medical monitoring.

13 The Court extended the Temporary Restraining Order, ordered further briefing, and set  
14 a preliminary injunction hearing to determine whether a further injunction should issue and  
15 heard oral argument and testimony on July 19, 2019. The parties agreed to consolidate the  
16 preliminary injunction hearing with the merits under Federal Rule of Civil Procedure  
17 65(a)(2).

## 18 II. Legal Standard

19 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should  
20 not be granted unless the movant, by a clear showing, carries the burden of persuasion.’”  
21 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520  
22 U.S. 968, 972 (1997) (per curiam); see also *Winter v. Natural Res. Def. Council, Inc.*, 555  
23 U.S. 7, 24 (2008) (citation omitted) (“[a] preliminary injunction is an extraordinary remedy  
24 never awarded as of right”). A plaintiff seeking a preliminary injunction must show that  
25 (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm without  
26 an injunction, (3) the balance of equities tips in his favor, and (4) an injunction is in the  
27 public interest. *Winter*, 555 U.S. at 20.

1           The parties do not agree on what standard should apply in this context because  
2       Respondent is a civil immigration detainee and not a prisoner. While there does not appear  
3       to be a Ninth Circuit case addressing involuntarily feeding a civil detainee in immigration  
4       custody, the weight of authority applies the standard articulated in *Turner v. Safely*, 482  
5       US 78 (1987). *See Aamer v. Obama*, 742 F.3d 1023, 1038–39 (D.C. Cir. 2014) (detainees  
6       at Guantanamo Bay were not likely to succeed on their claims that involuntary feeding  
7       violated their First Amendment rights or their substantive due process right to refuse  
8       unwanted medical treatment); *Department of Homeland Security v. Ayvazian*, 2015 WL  
9       5315206 (S.D. Fl. Sep. 11, 2015) (employing the *Turner* test and finding that involuntarily  
10      feeding a detainee does not violate his constitutionally protected rights or free speech or  
11      the right to refuse unwanted medical treatment); *In re Soliman*, 134 F. Supp. 2d 1238,  
12      1253–54 (N.D. Ala. 2001), vacated as moot *Soliman v. United States*, 296 F.3d 1237 (11th  
13      Cir. 2002) (involuntarily feeding hunger-striking INS detainee did not violate First  
14      Amendment or his right to privacy); *In re Fattah*, No. 08-MC-164, 2008 WL 2704541, at  
15      \*3–4 (M.D. Pa. July 8, 2008) (employing *Turner* analysis and finding that involuntarily  
16      feeding immigration detainee did not violate his constitutional rights).

17          Respondent argues that *Turner* is inapplicable because it is irreconcilable with the  
18      general proposition that a person “detained under civil—rather than criminal—process . . .  
19      is entitled to ‘more considerate treatment’ than his criminally detained counterparts.”  
20      *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). *See also Unknown Parties v. Johnson*,  
21      No. CV-15-00250-TUC-DCB, 2016 WL 8188563 (D. Ariz. Nov. 18, 2016), *affirmed by*  
22      878 F.3d 710 (9th Cir. 2017). Instead, Respondent contends *Youngberg v. Romeo*, 457  
23      U.S. 307 (1982), provides the proper standard, where the Supreme Court held that  
24      individuals have a constitutionally protected liberty interest to reasonably safe conditions  
25      of confinement and freedom from unreasonable bodily restraints. Although *Youngberg* has  
26      been employed to evaluate conditions of confinement in the civil detainee context,  
27      Respondent does not cite a single case applying it in the context of the United States’s  
28      request to involuntarily feed a detainee. Nor has Respondent offered any reasoning as to

1 why the specific constitutional considerations identified in *Turner* are inadequate to  
2 evaluate and safeguard the interests of a civil detainee. As a result, based on the weight of  
3 authority, the Court will apply the *Turner* standard to the United States's request.

### 4 **III. Discussion**

#### 5 **A. Likelihood of Success on the Merits**

6 The first question is whether there is a valid, rational connection between the  
7 regulation and a legitimate governmental interest put forward to justify it. The United  
8 States offers two justifications: preserving the lives of those in its custody and maintaining  
9 security and discipline in the detention facility. There is a wealth of authority concluding  
10 that such interests are legitimate and justify involuntary feeding of hunger-striking inmates  
11 and detainees. *E.g., In re Grand Jury Subpoena John Doe v. United States*, 150 F.3d 170,  
12 172 (2d Cir. 1998); *Garza v. Carlson*, 877 F.2d 14, 17 (8th Cir. 1989);

13 The second factor is whether there are alternative means of exercising the asserted  
14 constitutional right that remain available. Because Respondent is not intending to  
15 communicate a particular message with his hunger strike, this factor does not weigh in  
16 favor of either party. The Court must next consider whether and the extent to which  
17 accommodation of the asserted right will have an impact on detention staff, detainees, and  
18 the allocation of resources generally. The Court heard un rebutted testimony that caring for  
19 a hunger-striking detainee in rapidly declining health creates a burden on the United States'  
20 resources in the number of staff required to assist Respondent and in transporting him for  
21 further treatment because of his refusal to eat. There was also testimony that allowing  
22 Respondent to continue his hunger strike could undermine detainees' confidence in the  
23 treatment they receive or empower other detainees to engage in a hunger strike.

24 Finally, the Court must whether the regulation represents an exaggerated response  
25 to prison concerns. Under the circumstances, the Court finds that involuntarily feeding  
26 Respondent is not an exaggerated response to the harm presented by Respondent's hunger  
27 strike. In short, the United States has established success on the merits of its claim.

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